

Facts About The Kansas Department of Agriculture, Farmers' Markets and Direct Marketers



March 2005

Did you know?

Many different agriculture-related direct marketing businesses may be affected by various state or federal regulations that serve several purposes. They protect consumers by ensuring safe food, accurate weights and measures, safe pesticide use, or the quantity of water used. These same regulations can help build your business reputation and protect your business by ensuring a level playing field, and by protecting you from litigation or destructive rumors about the quality of your product or service. You may need to understand these regulations if you:

- have an orchard or nursery
- sell or deliver live plants
- grow and process fruits or vegetables
- produce and bottle wine, beer or cider
- sell at a farmers market
- process meat or poultry for sale
- milk cows or goats
- sell milk or cheese
- are certified organic
- sell eggs
- have vending machines
- apply pesticides or fertilizers
- label a food product
- operate a commercial kitchen

Food Safety Inspection

Certain food safety responsibilities were transferred from the Kansas Department of Health and Environment to the Kansas Department of Agriculture in October 2004. KDA's new responsibilities included licensing and inspecting grocery stores, restaurants in grocery stores, food processors and manufacturers, food wholesalers and warehouses, convenience stores, mobile ice cream vendors, many farmers' market activities, and food vending machine companies and dealers. The Kansas Department of Health and Environment continues to inspect restaurants, school food service operations, senior meal sites, mobile food units and lodging facilities.

The **Retail Food Inspection** program is responsible for food safety inspections involving retail sale of foods. This program inspects grocery stores, restaurants in grocery stores, convenience stores, food wholesalers and warehouses, farmers' markets, food processors and food manufacturers.

The **Agricultural Commodities Assurance** program is responsible for food safety inspections involving eggs.

The **Meat and Poultry Inspection** program licenses and inspects meat and poultry plants in a manner that is "equal to" federal inspection. It also responds to consumer food safety concerns involving meat or poultry products.

The **Dairy Inspection** program inspects dairies, milk haulers, transfer stations, pasteurization plants, ice plants, and beer, wine and cider producers and bottlers.

The **Weights and Measures** program is responsible for ensuring accurate weighing and measuring devices in commerce. They also conduct food safety inspections involving ice cream trucks and food vending machines, and verify that products sold by weight or volume contain what is stated on the label.

Live Plant Dealer Licensing

The **Plant Protection and Weed Control** program protects Kansas' native and cultivated plants from foreign plant diseases, noxious weeds and damaging insects. They license and inspect nurseries and live plant dealers.



The Sale of Eggs at Farmers' Markets

Usually, eggs (shell eggs of domesticated chickens) sold directly to customers at open-air markets are ungraded eggs from the producer's own flock. As such, they are exempt from the Kansas Egg Law, K.S.A. 2-2503, that requires inspection fees, permitting and other items from other egg producers. Exempted eggs, however, must still be unfertilized and maintained at a temperature of 41° Fahrenheit. The eggs may only be sold in used cartons if they are clean and all markings on the carton, including the grade, company name, USDA seal and "K" number (a Kansas permit number), are obliterated.

Some markets also allow the sale of graded eggs. The standards of size and quality of these eggs are determined by the Kansas Department of Agriculture. Vendors must not sell eggs below Grade B. The container in which graded eggs are sold must indicate the size and quality in boldface type letters not less than 3/8 inch in height. The name of the vendor by or for whom the eggs were graded or labeled must also be indicated on the container.

An application for registration to grade eggs for size and quality for subsequent resale to food purveyors, retailers or consumers in accordance with the provisions of the Kansas Egg Law may be submitted, with a registration fee, to the Kansas Department of Agriculture. Vendors must also remit a quarterly inspection fee that is, at the minimum, \$15 or \$.0035 multiplied by the number of dozen eggs sold. If an egg producer sells less than 1,000 dozen eggs per year, he or she must purchase stamps. Payment of registration and inspection fees must be remitted to:

Kansas Department of Agriculture
Records Center - ACAP
109 SW 9 th Street
Topeka KS 66612

For more information about the sale of eggs in Kansas, contact:

Kansas Department of Agriculture Agricultural Commodities Assurance Program
Tim Tyson, Program Manager
Forbes Field, Building 282
Topeka, KS 66619
(785) 862-2415 voice
(785) 862-2460 fax
<http://www.ksda.gov>

The Sale of Milk and Dairy Foods at Farmers Markets

Any foods that consist in whole or in part of milk, milk products, or dairy products that are sold off farm premises must contain pasteurized, graded milk only, be properly labeled, and maintained at the appropriate temperature. Milk products are products made by the addition of any substance (such as cream, sour cream, concentrated milk, buttermilk, eggnog, and yogurt.) Dairy products are products that may be made from milk or milk products and include such items as butter, cheese, dry milk and frozen dairy desserts.

For more information on the sale of milk, milk products, or dairy products, contact:

Dairy Inspection Program
George Blush, Program Manager
109 SW 9th Street
Topeka, KS 66612
(785) 296-3511 voice
(785) 296-0673 fax
<http://www.ksda.gov>



The Sale of Fruits and Vegetables at Farmers' Markets

The Kansas Department of Agriculture's Division of Weights and Measures regulates the method of sale of whole fruits and vegetables. The intent of these guidelines is to provide consumers with accurate and adequate information about commodities so that they can make price and quantity comparisons. A list of commodities commonly produced in Kansas and offered for sale at farmers' markets, and the method by which they may be sold, follows:

| Commodity | Method of Sale | Commodity | Method of Sale |
|------------------|----------------------------------|---------------------------|----------------------------------|
| Apples | weight or count, or dry measure* | Leeks | weight |
| Apricots | weight | Lettuce | weight or count |
| Artichokes | weight or count | Limes | weight or count |
| Asparagus | weight or count | Melons (whole) | weight or count |
| Beans | weight or dry measure | Melons (cut or pieces) | weight |
| Beets | weight or bunch | Mushrooms | weight or measure |
| Berries (all) | weight or measure** | Okra | weight |
| Broccoli | weight or bunch | Onions (spring or green) | weight or bunch |
| Brussel sprouts | weight | Onions (dry) | weight |
| Cabbage | weight | Parsley | weight or bunch |
| Cantaloupes | weight or count | Parsnips | weight |
| Carrots | weight or bunch | Peaches | weight or count, or dry measure* |
| Cauliflower | weight or bunch | Pears | weight or count, or dry measure* |
| Celery | weight or count | Peas | weight |
| Cherries | weight or measure** | Peppers | weight or count |
| Corn on cob | count | Persimmons | weight or count |
| Cranberries | weight or measure | Plums | weight or dry measure* |
| Cucumbers | weight or count | Pomegranates | weight or count |
| Currants | weight or measure** | Potatoes (Irish or sweet) | weight |
| Dates | weight | Prunes | weight |
| Eggplant | weight or count | Pumpkins | weight or count |
| Escarole | weight or bunch | Radishes | weight |
| Figs | weight | Rhubarb | weight |
| Garlic | weight or count | Rutabagas | weight |
| Grapes | weight | Spinach | weight or bunch |
| Greens (all) | weight | Tomatoes | weight or dry measure* |
| Kale | weight | Tomatoes (cherry) | weight or measure** |
| Kohlrabi | weight | Turnips | weight or bunch |

*in units not less than 1 peck

** Berries and small fruits sold by measure must be sold in containers standardized by the "Berry Basket and Box Code".



Bulk commodities sold by weight must be weighed on an NTEP scale that has been certified by a Kansas-licensed scale company. All commodities or produce must be sold by net weight. The tare or packaging material must be discounted from the gross weight of the commodity to determine the net weight. Scales used for bulk sales or direct sales must be kept level if a level bubble indicator is on the device; have support adequate enough for the weighing device and the load to be weighed, and be inspected and tested once every 365 days by a licensed service company. A list of licensed service companies may be obtained by contacting the Weights and Measures Program (contact information provided below).

Berries (all fruit whose names end in the term “berry”) and small fruits (including, but not limited to, cherries, currants and cherry tomatoes) sold by dry measure (volume) must be offered for sale in measure containers with standard capacities, as per the Berry Basket and Box Code:

- International System of Units (SI) Capacities-250 milliliters, 500 milliliters, or 1 liter
- or
- Inch-Pound Capacities-1/2 dry pint, 1 dry pint, or 1 dry quart

These containers may be either open or else covered by uncolored transparent lids or other wrappings that do not obscure the contents. When selling berries and small fruits by volume in dry measure containers, whether or not covered, the measure containers themselves shall not be packages for labeling purposes (that is, will not require labeling).

For more information on the sale of fruits and vegetables, contact:

Kansas Department of Agriculture Weights and Measures Program
Tim Tyson, Program Manager
Forbes Field, Building 282
Topeka, KS 66619
(785) 862-2415 voice
(785) 862-2460 fax
<http://www.ksda.gov>



Labeling Products Offered for Sale at Farmers' Markets

According to the Kansas Department of Agriculture, (K.S.A. 83-201(h) Kansas Weights and Measures Law) every food in package form must be labeled. The term "package" refers to any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. Each label must bear the following information:

- the common and usual name of the product, or the name under which a standard of identity has been adopted
 - the name and address of the manufacturer or distributor
 - the net contents of the package
 - if the article is one for which a standard has not been adopted, a list of ingredients in the order of their preponderance.
- This information must be printed on the label in type of sufficient size and prominence to be easily read under the normal conditions of sale and display. It should be printed on the main part of the label in a color that contrasts with its background and it must be legible.

Product Claims

Labels often include claims about the product offered for sale (e.g. "organic", "natural", "free range"). However, these terms must be used cautiously, as many are regulated. For instance, the National Organic Standards established by the United States Department of Agriculture dictate that the term "organic" or any derivation thereof (such as "organically grown") is strictly reserved for use by producers who have been certified organic by an independent, third-party agency on behalf of the USDA. Persons found to improperly use this terminology are subject to fines. However, farmers and food handling operations that sell less than \$5,000 of organic agricultural products annually are exempt from certification. Some meat product claims are not permitted (e.g. "chemical free", "antibiotic free", and "hormone free"). Other phrases, such as "raised without the use of subtherapeutic antibiotics" or "no hormones added" are permissible. For more information about product claims, contact the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture at:

USDA, FSIS, OPPDE
Labeling and Consumer Protection Staff
1400 Independence Avenue, SW Room 602 - Annex Building
WASHINGTON, DC 20250-3700
(202) 205-0623 or (202) 205-0279
www.fsis.usda.gov/oppde/larc/Claims.htm

Regardless of the product claims used, the producer is always under the legal obligation to be truthful.



Food Samples and Service at Farmers' Markets

Generally, samples of permissible foods may be distributed to farmers' market customers. All samples should be prepared and handled with the least possible manual contact. Food handlers must wash their hands with soap and water prior to direct contact with the food and especially after visiting a restroom. No bare hand contact with ready-to-eat food is allowed. Disposable gloves or suitable utensils should be provided for this purpose. Hands should be washed before donning gloves and torn or soiled gloves should be replaced.

Food samples should never be solicited by or accepted from any person infected by a communicable disease or who is a known carrier of such a disease. Any samples provided to customers must be protected by a cover and offered with clean tongs, toothpicks, napkins, etc.; a trash container must be provided for their disposal. Any instruments or devices used to prepare samples such as knives or cutting boards must be cleaned and sanitized regularly (paper towels and a mild bleach solution work well here).

Thermometers may be used to assess the proper temperature of food distributed as samples or sold. They should be calibrated before each day's use by performing the steps listed:

- 1) Fill a cup with ice
- 2) Add just enough water to fill the air space just over the thermometer sensor.
- 3) Leave the thermometer in the cup for at least two (2) minutes.
- 4) Read the thermometer. If the thermometer does not read 32°, then adjust according to instructions.

Thermometers appropriate for measuring the temperatures of products sold must be used (for hot food, use a 0° to 220° thermometer; for cold or frozen food, use a -40° to 160° thermometer). Critical temperatures for germ growth are 40 to 140. Dispose of food items left in this range of temperatures for four hours or more. To insure that food items are maintained at the correct temperature, take temperatures once hourly.

The distribution of prepared and perishable foods, such as cooked meat samples, may be done by any vendor no more than six times in a year, after which time a Kansas Food Service License must be obtained. All vendors distributing perishable foods, whether licensed or not, must comply with the Kansas Food Code, which is available from the Kansas Department of Agriculture or Health and Environment and the regulations outlined in the publication entitled "Temporary Food Service Establishment Guidelines". Some local governments require a special license for temporary event food vendors as well; this may be determined by contacting the local department of health or city offices.

Food Service Licensing
Kansas Department of Health and Environment
(785) 296-1500
Email: info@kdhe.state.ks.us
On the web: www.kdhe.state.ks.us/



The Sale of Meat Products at Farmers' Markets

The sale of frozen meat or meat products, seafood and poultry is permitted when they are from an inspected source, properly labeled and maintained frozen. There are currently three different types of meat processing facilities in the state of Kansas: “custom”, “state-inspected” and “federally-inspected”. The retail sale of meat processed at a custom facility is not permitted. However, meat processed at state- or federally- inspected facilities is permitted when bearing the appropriate mark of inspection. Meat processed at a state-inspected facility in Kansas may only be sold within the state. Meat processed at a federally-inspected facility in Kansas may be sold in other states as well.

Meat products offered for sale must be properly labeled. Each label must bear the following information:

1. Name of the product. If a product claims to be or is represented as a product for which a definition and standard of identity or composition exists, it shall be the name of the product specified (e.g. “ground beef”)
2. Ingredients statement (if needed). If a product is fabricated from two or more ingredients, the word “ingredients” shall be followed by the common or usual names of the ingredients and arranged in descending order of predominance according to the amounts used in product preparation.
3. Inspection legend and establishment number.
4. Handling statement (if needed). When packaged products require any special handling to maintain their wholesomeness, they shall have prominently displayed on the principal display panel a statement such as “Keep Refrigerated” or “Keep Frozen”.
5. Safe handling instructions (if needed). All raw meat and poultry products (any product where the meat or poultry component is not fully-cooked or ready-to-eat) shall have safe handling instruction prominently placed on the label.
6. Net weight statement (if needed). This is required on packages for retail sale if the net weight is one pound or greater
7. Signature line (manufacturer’s or distributor’s name and address, including zip code). The name and place of business of the manufacturer, packer or distributor for whom the product is prepared shall appear in the required place on the label. This may be shown as “prepared for” or “distributed by”.
8. Nutritional facts panel of meat and poultry products is needed. The regulations exempt products produced by small businesses, provided that the labels for these products bear no nutritional claims or nutritional information.

Many meat producers use the label provided by the facility that processes their product. However, they may also elect to develop their own label with the help of the Meat and Poultry Inspection Division of the Kansas Department of Agriculture. For more information on labeling, contact:

Kansas Department of Agriculture
Food Safety Program
E.M. Sumner, D.V.M., Program Manager
109 SW 9th Street
Topeka, KS 66612
785-296-3511 voice
785-296-0673 fax
www.ksda.gov



Often, meat labels include claims about the product offered for sale (e.g. “organic”, “natural”, “free range”). However, these terms must be used cautiously, as many are regulated. For instance, there are several meat product claims that are not permitted (e.g. “chemical free”, “antibiotic free”, and “hormone free”). Other phrases, such as “raised without the use of subtherapeutic antibiotics” or “no hormones added” are permissible. More information about claims can be obtained from the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture at:

USDA, FSIS, OPPDE
Labeling and Consumer Protection Staff
1400 Independence Avenue, SW Room 602 - Annex Building
WASHINGTON, DC 20250-3700
(202) 205-0623 or (202) 205-0279
www.fsis.usda.gov/oppde/larc/Claims.htm.

All meat must be maintained frozen, at 0° Fahrenheit. Thermometers appropriate for measuring the temperatures of products sold (for frozen food, a –40° to 160° thermometer) should be used hourly.

A note about poultry

It is widely believed that on-farm slaughtered poultry may be sold at farmers’ markets as long as fewer than 1,000 birds are sold. That is not true. Poultry products, like other meat products sold at open-air markets, must be from an inspected source. The Kansas Department of Agriculture, which inspects farmers’ markets, would remove poultry products that have not been processed at an inspected facility from a sales stall during hours of operation.



The Sale of Baked Goods at Farmers' Markets

Many kinds of baked goods can be found at farmers' markets throughout the state. Certain baked goods are acceptable for sale at farmers' markets, but others are not.

Items acceptable for sale:

- breads (yeast and quickbreads)
- cakes (except cream-filled or cheesecakes)
- cookies
- brownies
- muffins
- cupcakes (except cream-filled)
- fruit pies not requiring refrigeration

Items not acceptable for sale:

- cheesecake
- pumpkin, cream, or custard pies
- cream-filled cupcakes or doughnuts
- frostings and fillings with cream cheese

All baked goods offered for sale must be proportioned and prepackaged in clean, new wrappings, jars or bags. These packages must not be open and cannot be opened to sell part of the contents. Any decorating of cookies, cakes, etc. must be done prior to packaging and cannot be finished in a selling space.

According to the Kansas Department of Agriculture, (K.S.A. 83-201(h) Kansas Weights and Measures Law) every food in package form must be labeled. The term "package" refers to any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. Each label must bear the following information:

- the common and usual name of the product, or the name under which a standard of identity has been adopted
- the name and address of the manufacturer or distributor
- the net contents of the package
- if the article is one for which a standard has not been adopted, a list of ingredients in the order of their preponderance

This information must be printed on the label in type of sufficient size and prominence to be easily read under the normal conditions of sale and display. It should be printed on the main part of the label in a color that contrasts with its background and it must be legible.



Frequently Asked Questions about Farmer's Markets

Q: What is a Potentially Hazardous Food? What are the rules about making and selling them at the market?

A: Potentially Hazardous Food (PHF) is food that supports the growth of harmful microorganisms. These foods are kept safe by controlling the temperature they are held at. Some examples are: cooked or raw animal (protein) products such as meats, poultry, milk and milk products, fish and other seafood; heat treated vegetables and starches such as cooked rice, beans, potatoes, and pasta; and other foods such as tofu, seed sprouts, cut melons, and garlic in oil. Any foods that may be considered PHF are prohibited from sale at the market unless a food safety expert certifies that the food is not hazardous, or the food has been produced at a licensed food facility. The Food Science Institute at KSU is a good resource.

Q: What is a certified kitchen?

A: A certified kitchen is a commonly used term for a licensed food facility. There are multiple license types, so contact the Department of Agriculture for more information.

Q: Can I obtain a license for my home kitchen?

A: No, personal use kitchens may not be licensed. However, some people have constructed commercial kitchens in their home in order to become licensed. These kitchens meet all appropriate standards such as: adequate warewashing (washing, rinsing and sanitizing food utensils and equipment) facilities; separation from living quarters by walls and self closing doors; or access to the business from the outdoors. KDA can assist you if you would like to pursue this option.

Q: Can I provide samples of my food?

A: All food safety rules must be followed if samples are offered. They should be prepared under sanitary conditions. Samples of potentially hazardous foods are allowed from licensed sources only. They should be prepared in the licensed facility, and should be kept out of the temperature danger zone. Bare hand contact with the samples is prohibited. Pre-packaged samples, toothpicks, or other means of distributing the samples to customers should be used. This will prevent the customers from contaminating the other samples.

Q: Can I sell wild mushrooms?

A: Due to the extreme danger posed by consumption of misidentified wild mushrooms, the 1999 Kansas Food Code prohibits the sale of wild mushrooms unless each mushroom is inspected by an approved authority.

Q: What information needs to be on my labels?

A: All packaged food must be labeled with the name and address of the producer, the common name of the product, the list of ingredients in descending order by weight, and the net weight of the product.

Q: Can I cook food at the market?

A: All food offered for immediate consumption at the farmer's market must be prepared in a licensed mobile unit. Mobile units are under the jurisdiction of the Kansas Department of Health and Environment. For mobile unit licensing contact the KDHE at (785) 296-5600.



Call Us

The Kansas Department of Agriculture is here to help marketers learn about food safety and other regulations. You can reach any of our programs at (785) 296-3556 or by email to ksag@kda.state.ks.us.

Other Resources

Tax Information

Kansas Department of Revenue
(785) 296-3909

Email: tac@kdor.state.ks.us

On the web: www.ksrevenue.org/

Restaurant Inspection

Kansas Department of Health and Environment
(785) 296-1500

Email: info@kdhe.state.ks.us

On the web: www.kdhe.state.ks.us/

Hunting and Fishing

Kansas Department of Wildlife and Parks
(785) 296-2281

Email: feedbacks@wp.state.ks.us

On the web: www.kdwp.state.ks.us/

Beginning Farmer Loan Program

Kansas State Treasurer
(785) 296-3171

Email: email@treasurer.state.ks.us

On the web: <http://kansasstatetreasurer.com>

State Loans and Grants

Kansas Department of Commerce
(785) 296-3481

Email: pclark@kansascommerce.com

On the web: www.kansascommerce.com/

Federal Loans and Grants

USDA Rural Development
(785) 271-2700

Email: chuck.banks@ks.usda.gov

On the web: www.rurdev.usda.gov/ks/



